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UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

JESSA HINTON, EVA PEPAJ, CARISSA ROSARIO and TIFFANY TOTH,

Plaintiffs,

v.

RT 206 ENTERTAINMENT, LLC, d/b/a BARE DEN ADULT CABARET,

Defendant.

Docket No.

COMPLAINT FOR:

(1) Misappropriation of Likeness;
(2) Violation of the Lanham Act, 15 U.S.C. § 1125(a);
(3) Unfair Competition, N.J.S.A. 56:4-1; and
(4) Unfair Competition.

Jury Trial Demanded

Plaintiffs Jessa Hinton, Eva Pepaj, Carissa Rosario, and Tiffany Toth ("Plaintiffs") set forth and allege as follows:

INTRODUCTION AND PARTIES

A. Plaintiffs

1. Plaintiff Jessa Hinton ("Hinton") is, and at all times relevant to this action was, a professional model and actress, and a resident of California.

2. Plaintiff Eva Pepaj ("Pepaj") is, and at all times relevant to this action was, a professional model and actress, and a resident of California.

3. Plaintiff Carissa Rosario ("Rosario") is, and at all times relevant to this action was, a professional model and actress, and a resident of California.

4. Plaintiff Tiffany Toth ("Toth") is, and at all times relevant to this action was, a professional model and actress, and a resident of California.

B. Defendant

5. Upon information and belief, RT 206 Entertainment, LLC, ("Defendant") is a limited liability company organized and existing under the laws of the State of New Jersey with a principal place of business at 641 US-206, Newton, Sussex County, New Jersey.

6. Upon information and belief, Defendant is now, and at all times mentioned herein was, the operator of the Bare Den Adult Cabaret ("Bare Den"), which is a strip club, located at 641 US-206, Newton, Sussex County, New Jersey.

7. Upon information and belief, Defendant owns and/or operates various social media accounts, including a Facebook page (https://www.facebook.com/BareDenNJ), an Instagram page (https://www.instagram.com/baredennj), and a Twitter page (https://www.twitter.com/baredennj) through which it promotes, endorses, and markets its business, solicits customers, and advertises events for Bare Den.

8. Upon information and belief, Defendant has, and at all times mentioned herein had, control over the contents of its social media accounts.

JURISDICTION AND VENUE

9. This Court has federal question jurisdiction over this action under 28 U.S.C. § 1331 because Plaintiffs allege violations of 15 U.S.C. §1125, *et seq.*, (Lanham Act).

10. Venue is proper in this Court under 28 U.S.C. § 1391 because the Defendant is located in this judicial district.

FACTUAL BACKGROUND

11. Each Plaintiff is, and at all times mentioned herein was, a professional model and actress who earns a living by commercializing her identity, image, and likeness for many business endeavors, including the advertisement and promotion of products and services through negotiated, arms-length transactions with reputable commercial brands and companies.

12. A model's reputation directly impacts the commercial value associated with the use of image, likeness, or identity to promote a product or service. As such, she has the right to control the commercial exploitation of her name, photograph, and likeness.

13. Each Plaintiff expended and continues to expend substantial effort, resources, and time in building her reputation in the modeling industry.

14. Each Plaintiff carefully considers the reputation, brand, and type of good or service advertised by any potential client prior to authorizing the use of her image or likeness.

15. Each Plaintiff's career in modeling and acting has substantial value derived from the goodwill and reputation each has built. Each Plaintiff commands substantial sums of money for the licensed commercial use of her image.

16. Defendant has brazenly and repeatedly, without consent, misappropriated Plaintiffs' images and likenesses for use in its advertising materials produced to market and promote its strip club.

17. Defendant's use of Plaintiffs' images and likenesses was for Defendant's commercial benefit. Defendant used Plaintiffs' images to drive traffic to Defendant's strip club and increase revenue.

18. Defendant's use of the Plaintiffs' images on Defendant's social media accounts falsely suggests Plaintiffs' sponsorship of, affiliation with, and participation in Defendant's business.

19. Defendant never sought or obtained permission to use either of the Plaintiffs' images and likenesses.

20. Plaintiffs at no time gave Defendant permission to use their images to promote Bare Den's business, services, and/or company, or for any other purpose.

21. Defendant has never paid any of the Plaintiffs for its unauthorized use of their images or likenesses.

22. Plaintiffs, by FedEx on August 10, 2017, demanded that Defendant cease and desist use of their images and likenesses. Defendant did not respond.

23. Defendant's unauthorized use of Plaintiffs' images and likenesses is knowing, willful, and intentional.

PLAINTIFFS' ALLEGATIONS

24. Plaintiffs re-state and re-allege paragraphs 1-23 above and incorporate the same by reference as though fully set forth herein.

Plaintiff Jessa Hinton

25. Plaintiff Hinton is a professional model.

26. In all prior instances of authorized commercial marketing and promotion of her image, likeness, or identity by third parties, Plaintiff Hinton negotiated and expressly granted authority for such use pursuant to agreed upon terms and conditions and for agreed upon compensation.

27. Defendant's use of Plaintiff Hinton's image on its Facebook account (previously accessible via the URL:

https://www.facebook.com/BareDenNJ/photos/a.732272226849630.1073741827.732259923517527/748327385244114/?type=3&theater) began on October 30, 2014, is unauthorized, and for a commercial purpose.

28. Defendant has never hired or contracted with Plaintiff Hinton to advertise, promote, market, or endorse Defendant's business.

29. In the image used by the Defendant to promote its business and advertise upcoming events, Plaintiff is readily identifiable in that any person seeing the photograph with the naked eye can reasonably determine that the person depicted is Plaintiff Hinton.

30. Defendant's appropriation of Plaintiff Hinton's image was for the purpose of advertising or soliciting patronage of the Defendant's establishment.

31. Defendant has never sought Plaintiff Hinton's permission, nor did Plaintiff give Defendant permission to use the image to advertise and promote its club.

32. Defendant has never compensated Plaintiff Hinton for any use of her image and likeness.

33. Defendant had actual knowledge that it was using Plaintiff Hinton's image without compensation or consent. Accordingly, Defendant knowingly misappropriated Plaintiff Hinton's image and identity in total disregard of Plaintiff's rights.

34. Defendant derived a direct commercial benefit from its unauthorized use of Plaintiff Hinton's image and likeness.

35. As a direct and proximate result of Defendant's unauthorized use of Plaintiff Hinton's image and likeness, Defendant made profits or gross revenues in an amount to be established at trial.

36. Plaintiff Hinton has further been damaged as a direct and proximate result of Defendant's unauthorized use, as she has lost her exclusive right to control the commercial exploitation of her name, photographs, and likeness, resulting in damages, the total amount of which will be established by proof at trial.

Plaintiff Eva Pepaj

37. Plaintiff Pepaj is a professional model.

38. In all prior instances of authorized commercial marketing and promotion of her image, likeness, or identity by third parties, Plaintiff Pepaj negotiated and expressly granted authority for such use pursuant to agreed upon terms and conditions and for agreed upon compensation.

39. Defendant's use of Plaintiff Pepaj's image on its Facebook account (previously accessible via the URL: https://www.facebook.com/BareDenNJ/photos/a.751520448258141.1073741829.732259923517527/764633116946874/?type=3&theater) began on December 2, 2014, is unauthorized, and for a commercial purpose.

40. Defendant has never hired or contracted with Plaintiff Pepaj to advertise, promote, market, or endorse Defendant's business.

41. In the image used by the Defendant to promote its business and advertise upcoming events, Plaintiff is readily identifiable in that any person seeing the photographs with the naked eye can reasonably determine that the person depicted is Plaintiff Pepaj.

42. Defendant's misappropriation of Plaintiff Pepaj's image and likeness was for the purpose of advertising and soliciting patronage of the Defendant's establishment.

43. Defendant has never sought Plaintiff Pepaj's permission, nor did Plaintiff give Defendant permission to use the image to advertise and promote its club.

44. Defendant has never compensated Plaintiff Pepaj for any use of her likeness or image.

45. Defendant had actual knowledge that it was using Plaintiff Pepaj's image without compensation or consent. Accordingly, Defendant knowingly misappropriated Plaintiff Pepaj's images and identity, in total disregard of Plaintiff's rights.

46. Defendant derived a direct commercial benefit from its unauthorized use of Plaintiff Pepaj's image and likeness.

47. As a direct and proximate result of Defendant's unauthorized use of Plaintiff Pepaj's image and likeness, Defendant made profits or gross revenues in an amount to be established at trial.

48. Plaintiff Pepaj has further been damaged as a direct and proximate result of Defendant's unauthorized use, as she has lost her exclusive right to control the commercial exploitation of her name, photographs, and likeness, resulting in damages, the total amount of which to be established by proof at trial.

Plaintiff Carissa Rosario

49. Plaintiff Rosario is a professional model.

50. In all prior instances of authorized commercial marketing and promotion of her image, likeness, or identity by third parties, Plaintiff Rosario negotiated and expressly granted authority for such use pursuant to agreed upon terms and conditions and for agreed upon compensation.

51. Defendant's use of Plaintiff Rosario's image on its Facebook account (previously accessible via the URL: https://www.facebook.com/BareDenNJ/photos/a.732272226849630.1073741827.732259923517527/795258997217619/?type=3&theater) began on January 22, 2015, is unauthorized, and for a commercial purpose.

52. Defendant has never hired or contracted with Plaintiff Rosario to advertise, promote, market, or endorse Defendant's business.

53. In the image used by the Defendant to promote its business and advertise upcoming events, Plaintiff is readily identifiable in that any person seeing the photographs with the naked eye can reasonably determine that the person depicted is Plaintiff Rosario.

54. Defendant's appropriation of the images of Plaintiff Rosario was for the purpose of advertising or soliciting patronage of the Defendant's establishment.

55. Defendant has never sought Plaintiff Rosario's permission, nor did Plaintiff give Defendant permission to use the image to advertise and promote its club.

56. Defendant has never compensated Plaintiff Rosario for any use of her image and likeness.

57. Defendant had actual knowledge that it was using Plaintiff Rosario's image without compensation or consent. Accordingly, Defendant knowingly misappropriated Plaintiff Rosario's image and identity in total disregard of Plaintiff's rights.

58. Defendant derived a direct commercial benefit from its unauthorized use of Plaintiff Rosario's image and likeness.

59. As a direct and proximate result of Defendant's unauthorized use of Plaintiff Rosario's image and likeness, Defendant made profits or gross revenues in an amount to be established at trial.

60. Plaintiff Rosario has further been damaged as a direct and proximate result of Defendant's unauthorized use, as she has lost her exclusive right to control the commercial exploitation of her name, photographs, and likeness, resulting in damages, the total amount of which will be established by proof at trial.

Plaintiff Tiffany Toth

61. Plaintiff Toth is a professional model.

62. In all prior instances of authorized commercial marketing and promotion of her image, likeness, or identity by third parties, Plaintiff Toth negotiated and expressly granted authority for such use pursuant to agreed upon terms and conditions and for agreed upon compensation.

63. Defendant's first use of Plaintiff Toth's images on its Facebook account (previously accessible via the URL: https://www.facebook.com/BareDenNJ/photos/a.751520448258141.1073741829.732259923517527/1006789236064593/?type=3&theater) began on February 29, 2016, is unauthorized, and for a commercial purpose.

64. Defendant's second use of Plaintiff Toth's images on its Instagram account (previously accessible via the URL: https://www.instagram.com/p/BEoo9C8kVWZ/?taken-by=baredennj) began on April 25, 2016, is unauthorized, and for a commercial purpose.

65. Defendant's third use of Plaintiff Toth's images on its Facebook account (previously accessible via the URL: https://www.facebook.com/BareDenNJ/photos/a.751520448258141.1073741829.732259923517527/1056073391136177/?type=3&theater) began on May 9, 2016, is unauthorized, and for a commercial purpose.

66. Defendant's fourth use of Plaintiff Toth's images on its Instagram account (previously accessible via the URL: https://www.instagram.com/p/BFNziJ3kVRf/?taken-by=baredennj) began on May 9, 2016, is unauthorized, and for a commercial purpose.

67. Defendant's fifth use of Plaintiff Toth's images on its Facebook account (previously accessible via the URL: https://www.facebook.com/BareDenNJ/photos/a.751520448258141.1073741829.732259923517527/1061670317243151/?type=3&theater) began on May 18, 2016, is unauthorized, and for a commercial purpose.

68. Defendant's sixth use of Plaintiff Toth's images on its Facebook account (previously accessible via the URL: https://www.facebook.com/BareDenNJ/photos/a.751520448258141.1073741829.732259923517527/1109946955748820/?type=3&theater) began on August 3, 2016, is unauthorized, and for a commercial purpose.

69. Defendant's seventh use of Plaintiff Toth's images on its Instagram account (previously accessible via the URL:

https://www.instagram.com/p/BIqlQJkByxd/?taken-by=baredennj) began on August 3, 2016, is unauthorized, and for a commercial purpose.

70. Defendant's eighth use of Plaintiff Toth's images on its Facebook account (previously accessible via the URL: https://www.facebook.com/BareDenNJ/photos/a.751520448258141.1073741829.732259923517527/1109946565748859/?type=3&theater) began on August 5, 2016, is unauthorized, and for a commercial purpose.

71. Defendant has never hired or contracted with Plaintiff Toth to advertise, promote, market, or endorse Defendant's business.

72. In the images used by the Defendant to promote its business and advertise upcoming events, Plaintiff is readily identifiable in that any person seeing the photograph with the naked eye can reasonably determine that the person depicted is Plaintiff Toth.

73. Defendant's appropriation of the images of Plaintiff Toth was for the purpose of advertising or soliciting patronage of the Defendant's establishment.

74. Defendant has never sought Plaintiff Toth's permission, nor did Plaintiff give Defendant permission to use the images to advertise and promote its club.

75. Defendant has never compensated Plaintiff Toth for any use of her image or likeness.

76. Defendant had actual knowledge that it was using Plaintiff Toth's images without compensation or consent. Accordingly, Defendant knowingly misappropriated Plaintiff Toth's images and identity in total disregard of Plaintiff's rights.

77. Defendant derived a direct commercial benefit from its unauthorized use of Plaintiff Toth's images and likeness.

78. As a direct and proximate result of Defendant's unauthorized usage of Plaintiff Toth's images and likeness, Defendant made profits or gross revenues in an amount to be established at trial.

79. Plaintiff Toth has further been damaged as a direct and proximate result of Defendant's unauthorized use, as she has lost her exclusive right to control the commercial exploitation of her name, photographs, and likeness, resulting in damages, the total amount of which will be established by proof at trial.

COUNT I

Misappropriation of Likeness

80. Plaintiffs re-state and re-allege paragraphs 1 through 79 above and incorporate the same by reference as though fully set forth herein.

81. Plaintiffs have a right to control the commercial use of their names, images, and likenesses. Under New Jersey law, the unauthorized use of a person's image or likeness for a predominately commercial purpose is unlawful.

82. Defendant's use of Plaintiffs' images and likenesses to advertise its strip club business constitutes use for commercial purposes.

83. Defendant's use of Plaintiffs' photographs and likenesses did not occur in connection with the dissemination of news or information and was without a redeeming public interest or historical value.

84. Defendant never obtained Plaintiffs' consent for the use of their images and likenesses.

85. Defendant's use of each Plaintiffs' photographs and likenesses was willful and deliberate.

86. As a direct and proximate result of Defendant's scheme to create the false impression that Plaintiffs were affiliated with and/or performed at Defendant's strip club, Defendant enjoyed increased revenues and profits.

87. As a further direct and proximate result of Defendant's deliberate and willful conduct, Plaintiffs suffered actual damages in an amount to be established at trial.

COUNT II

Unfair Competition / False Endorsement

Lanham Act, 15 U.S.C. §1125(a)

88. Plaintiffs re-state and re-allege paragraphs 1 through 87 above and incorporate the same by reference as though fully set forth herein.

89. Plaintiffs, through their careers in modeling, advertising, and acting, have all attained fame and celebrity.

90. Each Plaintiff enjoys a substantial social media following and has appeared in numerous publications, television, and/or films.

91. Each Plaintiff earns her living by commercializing her identity for use by reputable brands and services through arms-length negotiated transactions.

92. Each Plaintiff possesses a valid and protectable mark in the form of her persona, image, likeness, and identity.

93. Each Plaintiff has, and at all times mentioned herein, possessed, maintained, and safeguarded her exclusive right to control the use of her persona, image, likeness, and identity.

94. Prior to authorizing the use of her image, likeness, or identity, each Plaintiff carefully considers the reputation of the potential client and the good or service being promoted.

95. Without consent, Defendant placed Plaintiffs' images and likenesses on advertisements promoting its strip club business.

96. In Defendant's advertisements that contain Plaintiffs' images and likenesses, Plaintiffs are clearly depicted and readily identifiable.

97. Defendant misappropriated Plaintiffs' images and likenesses in order to create the false impression that Plaintiffs are somehow affiliated with, have endorsed, or otherwise participate in Defendant's strip club business.

98. Defendant never sought Plaintiffs' consent to use her their images or likeness.

99. Plaintiffs have never been employed by, danced at, or affiliated themselves in any way with Defendant's strip club.

100. Plaintiffs would not agree to allow their image or likeness to be used to promote Defendant's strip club business.

101. Defendant, at all times mentioned herein, knew or should have known that it had no right to use Plaintiffs' images or likenesses to promote its strip club business.

102. Defendant placed the misappropriated images on the very same marketing channels (including Facebook, Instagram, and Twitter) used by Plaintiffs to promote themselves.

103. Defendant's misappropriation of Plaintiffs' images is likely to cause confusion as to Plaintiffs' affiliation with, sponsorship of, and/or participation in Defendant's strip club business.

104. Upon information and belief, Defendant's misappropriation has caused actual confusion among consumers as to Plaintiffs' affiliation with, endorsement of, and participation in Defendant's strip club business.

105. Defendant knew or should have known that obtaining the right to use their images and likenesses would have required consent and substantial compensation.

106. Defendant's repeated and brazen unauthorized use of Plaintiffs' images and likenesses, without seeking their consent, constitutes willful and deliberate conduct.

107. As a direct and proximate result of Defendant's scheme to create the false impression that Plaintiffs were affiliated with and/or performed at Defendant's strip club, Defendant enjoyed increased revenues and profits.

108. As a further direct and proximate result of Defendant's deliberate and willful conduct, Plaintiffs suffered actual damages in an amount to be established at trial.

COUNT III

Unfair Competition / False Endorsement

N.J.S.A. 56:4-1, *et seq.*

109. Plaintiffs re-state and re-allege paragraphs 1 through 108 above and incorporate the same by reference as though fully set forth herein.

110. Defendant's unauthorized use of Plaintiffs' images and likenesses in connection with creating the false impression that they were affiliated with and endorsed Defendant's business constitutes unfair competition under N.J.S.A. 56:4-1.

111. As a direct and proximate result of Defendant's scheme to create the false impression that Plaintiffs were affiliated with and/or performed at Defendant's strip club, Defendant enjoyed increased revenues and profits.

112. As a further direct and proximate result of Defendant's deliberate and willful conduct, Plaintiffs suffered actual damages in an amount to be established at trial.

113. Defendant's wrongful and deliberate conduct has caused significant damage to Plaintiffs, both directly and indirectly, and Plaintiffs request treble damages as authorized by N.J.S.A. 56:4-2.

COUNT IV

Common Law Unfair Competition

114. Plaintiffs re-state and re-allege paragraphs 1 through 113 above and incorporate the same by reference as though fully set forth herein.

115. Defendant's unauthorized use of Plaintiffs' images and likenesses in connection with creating the false impression that they were affiliated with and endorsed Defendant's business constitutes unfair competition under the common law of New Jersey.

116. As a direct and proximate result of Defendant's scheme to create the false impression that Plaintiffs were affiliated with and/or performed at Defendant's strip club, Defendant enjoyed increased revenues and profits.

117. As a further direct and proximate result of Defendant's deliberate and willful conduct, Plaintiffs suffered actual damages in an amount to be established at trial.

WHEREFORE, Plaintiffs respectfully pray for judgment against Defendant as follows:

1. For actual, consequential, and incidental damages in an amount to be proven at trial;
2. For the amount due, owing and unpaid to Plaintiffs representing the fair market value of their services;
3. For trebling of damages;
4. For punitive damages in an amount to be proven at trial;
5. For prejudgment interest in an amount proscribed by law;
6. For disgorgement of Defendant's profits;
7. For costs of this lawsuit including reasonable attorney's fees; and
8. For such other and further relief as to this court seem just, proper and equitable.

JURY DEMAND

Plaintiffs hereby demand trial by jury as to all issues in the above matter.

Respectfully submitted,

Date: August 24, 2017

BARON & BUDD, P.C.

s/ Jonas P. Mann

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